

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAVID E. KATES,

Plaintiff,

v.

C.O. ROBERT PACKER, *et. al*

Defendants.

CIVIL ACTION NO. 3:13-CV-1525  
(JUDGE CAPUTO)  
(MAGISTRATE JUDGE SAPORITO)

**ORDER**

**NOW**, this 29<sup>th</sup> day of March 2016, in accordance with the accompanying memorandum, **IT IS HEREBY ORDERED** that:

- (1) Magistrate Judge Saporito's Report and Recommendation (Doc. 179) is **ADOPTED in part** and **REJECTED in part**;
- (2) Plaintiff's claims for violations of various federal criminal statutes, violation of various Bureau of Prisons Program Statements and federal regulations and claims requesting declaratory or injunctive relief are **DISMISSED with prejudice** pursuant to 28 U.S.C. § 1915(A)(b);
- (3) Defendants' Motion to Dismiss (Doc. 150) is **GRANTED in part** and **DENIED in part**:
  - (a) Defendants' Motion to Dismiss Plaintiff's Eighth Amendment denial of medical care, conspiracy and Fifth Amendment Due Process claims is **GRANTED** and the claims are **DISMISSED with prejudice** for failure to state a claim upon which relief can be granted;
  - (b) Defendants' Motion to Dismiss Plaintiff's Fifth Amendment Due Process claim is **GRANTED** and the claim is **DISMISSED without prejudice** for failure to state a claim upon which relief can be granted;
  - (c) Defendants' Motion to Dismiss Plaintiff's Eighth Amendment use of excessive force claim with regard to Defendants: C.O. Packer,

Gwynn Wise, Jeffrey Stroud, and Jason Wagner is **DENIED**. This claim will be remanded to Magistrate Judge Saporito for further proceedings;

- ( d) Defendants' Motion to Dismiss Plaintiff's Eighth Amendment failure to intervene claims with regard to Defendants: C.O. Packer, Lt. Steve Booth, Lt. Chad Brandt, Gwynn Wise, Jeffrey Stroud, Jason Wagner, and D. Eroh, Jr., is **DENIED**. This claim will be remanded to Magistrate Judge Saporito for further proceedings;
- (4) The Clerk of Courts is directed to terminate the following Defendants from this action: Lt. Justin Foura; D.H.O. Angelo Jordan; C.O. Brandon Mattern; Brandon Shirk; Charles Anderson; Dennis Campbell; Jerald Loyek; Scott Buebendorf; Suzanne Figlo; A. Hicks; Kevin Pigos; Warden J.E. Thomas; and Michael Thwaits.
- (5) The parties are permitted to file further dispositive motions.
- (6) The matter is remanded to Magistrate Judge Saporito for further proceedings.

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge